avoid the accident." This doctrine is founded on sound reason and fully sustained by authority. *Whiteside* vs. *Russell*, 8 Watts & Serg. 44.

In this case, therefore, the burden of showing the loss to have been produced by a cause falling within the exceptions rested upon the defendants. The non-delivery of the goods by the defendants according to the bailment, was sufficient *prima facie* evidence on the part of the plaintiff.

Upon the ground of variance, however, between the proof and the declaration, the District Court was correct in its ruling. The motion for a new trial is, therefore, overruled.

In the Supreme Court of Pennsylvania.

CHILDS & CO. *vs.* DIGBY.[1]

The goods of a non-resident debtor, in the hands of a person residing in this State, are liable to be held by a writ of foreign attachment, although the goods themselves are in another State.

Error to the District Court of Allegheny County.

This was a foreign attachment issued against Thomas Scandrett, December 17th, 1851, in which William Digby, the defendant below and in error, was made garnishee. The writ was served upon the garnishee, December 18th, 1851. Judgment by default was rendered against the defendant, Scandrett, and the plaintiffs proceeded to trial against the garnishee, on the plea of *nulla bona*.

On the trial, the following facts were established by the evidence: For two years prior to November, 1851, Thomas Scandrett had carried on a clothing store at Youngstown, in the State of Ohio. William Digby had furnished him goods, in pursuance of an agreement under seal, dated September 27th, 1849, in which it was stipulated, that, if at any time Scandrett should be indebted to Digby, it should be lawful for said Digby to enter the said

[1] We are indebted to the Pittsburg Legal Intelligencer for this case.—*Eds. Am. L. Reg.*

store, and take such portion of the *goods sold by him* to Scandrett, as would be suffieient to satisfy his claim. In July, 1851, Scandrett left his store in charge of a salesman, with instructions to carry on the business, and went on a trading expedition to Lake Superior.

On the 21st day of November, 1851, the stock in the store consisted of a large amount of goods purchased from Digby, and other goods purchased from other persons; which other goods were valued at $689 26. On that day, Digby, by virtue of the agreement above recited, took into his possession all the goods purchased from him by Scandrett, and the salesman delivered to him the balance of the stock, amounting to $689 26, and executed a chattel-mortgage for it, to secure the balance of his claim, which was considerably more than the value of the entire stock. No authority was shown to the salesman to execute the mortgage, or dispose of the entire stock at wholesale. In April, 1852, after the service of the foreign attachment, Scandrett ratified the act of his agent, the salesman, considering it the best thing that could be done.

The Court below, WILLIAMS, Assistant Judge, charged the jury that the matter and thing attached must be in the power and jurisdiction of the Court, and referred to the case of *Christmas* vs. *Biddle*, and that the attachment would not lie. After a verdict in favor of defendant, this instruction was assigned for error.

Shaler & Co., for plaintiff in error, cited several authorities to show that the salesman exceeded his powers, and that his act did not convey the property in the goods to Digby, 2 Harris, 105; 18 Johns. 362. There was no question made as to the goods which Digby had sold to Scandrett. The question whether the goods were bound by the writ, depended on the construction of the law regulating foreign attachments.

Todd and Smith, for defendant in error, cited Story's Confl. Laws, § 539; 1 Harris, 223.

The opinion of the Court was delivered by

LEWIS, J.—The observation of Mr. Justice Coulter, in *Christmas* vs. *Biddle*, 1 Harris, 223, that the attachment process is a

proceeding *in rem*, and the matter and thing attached must be in the power and jurisdiction of the Court, must be taken with some qualification. It is true, that "the attachment process is a proceeding *in rem*;" but, it is equally true, that it is something more. It is also a proceeding against the garnishee, *personally*, for the purpose of compelling him to answer for the value, where the thing itself is not produced. The summons, the judgment and the execution, contain the bones and sinews of a proceeding *in personam*, against the garnishee, by means of which his own estate may be taken in execution, if he fail to "answer interrogatories," or "to produce the goods and effects of the defendant" found to be in his hands or possession, or "neglect to pay the debt attached, if the same be due and payable." The ultimate object of the proceeding is to appropriate the debtor's assets to the payment of his debts, and this object is one which ought to be favored. It may be accomplished wherever the courts have jurisdiction over the person who has the actual possession of the property, and the power to dispose of it according to their direction, or wherever the property itself may be taken into actual possession by the officers of the law. Real estate follows the law of its *situs*, and bank stock that of its creation. Where the one is located in a foreign jurisdiction, or the other created by a foreign law, neither is the subject of attachment here in the hands of one who has neither possession, nor title, but simply a naked power to sell. *Christmas* vs. *Biddle*, 1 Harris, 223. But this is not the case with ordinary goods and effects. In general, any one having possession of goods or effects, may surrender them in obedience to a judgment in a foreign attachment, although they may happen to be within a foreign jurisdiction at the time the writ was issued. The possession of them gives the power of removal and surrender. While this exists in the garnishee, there is no reason why he should not be compelled to exercise it in furtherance of the object of the law, and in advancement of justice. It was thought, at one time, that a foreign attachment would not lie on a debt contracted out of the jurisdiction. 2 Show. 373; Lord Raym. 346. But this was afterwards denied, and it was held that the debt always follows the

person of the debtor, and it is not material where it was contracted. *Andrews* vs. *Clarke*, Carthew, 25. In personal property the *lex loci rei sitæ* is not to be recognized. All that is required to sustain the proceedings against the garnishee, is, that he be within the jurisdiction of the Court when the writ was served, and that the property attached be in his hands or possession." The Court was in error, in directing the jury that the attachment would not lie for goods delivered to Digby in Ohio.

This disposes of the only point determined by the District Court; but, as the cause goes back, it is proper to express our opinion on the other points. A stranger has no right to object that an agent exceeded his power, 5 Johns. R. 44. But, where an agent exceeds his authority, and an interest has attached in favor of another, a subsequent ratification will not divest such interest, 5 East, 491. Where an agent exceeds his authority, the principal is bound to disavow it the first moment the fact comes to his knowledge, or he makes the act his own, 14 S. & R. 27. The first, second and third points ought to have been answered in the affirmative.

As we do not see how an affirmative answer to the fourth would have sustained the attachment, or otherwise have benefited the plaintiff, it was not error to refuse to answer it. If Digby is chargeable with the goods as assignee in trust for creditors, the present is not the form of proceeding in which that trust can be enforced.

Judgment reversed, and *venire de novo* awarded.

In the Supreme Court of Pennsylvania.

PHILLIPS ET AL. *vs.* DUNCAN.

Where a Mechanic's lien was filed for materials furnished at different dates within two years prior to the filing of the claim, it was *held*, that in the absence of a special contract, no recovery could be had on the scire facias, except for materials furnished within six months prior to the filing of the lien.

Error to District Court of Allegheny county.

This was a scire facias sur mechanics' lien filed for materials furnished during the year 1850 and 1851. On the 2d of May 1854,